

E-FILED on 1/11/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATURAL SELECTION FOODS, LLC,
a limited liability company,

Plaintiff,

v.

PREMIUM FRESH FARMS, LLC; a
California limited liability company;
SALVADORE PAUL TARANTINO; an
individual; EMMITT L. PFOST; an individual;
PAUL E. DUNHAM; an individual; PDP
ASSOCIATES, LLC; a California limited
liability company; and AG HARVESTING &
TECHNOLOGIES, LLC, a California limited
liability company,

Defendants.

No. C-07-00197 RMW

ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER;
DENYING PLAINTIFF'S MOTION TO
CONSOLIDATE MOTION FOR
PRELIMINARY INJUNCTION WITH TRIAL

TO DEFENDANTS PREMIUM FRESH FARMS, LLC; SALVADORE PAUL TARANTINO;
EMMITT L. PFOST; PAUL E. DUNHAM; PDP ASSOCIATES, LLC; AG HARVESTING &
TECHNOLOGIES, LLC, AND THEIR ATTORNEYS OF RECORD:

TEMPORARY RESTRAINING ORDER

This matter is before the court upon *Ex Parte* Motion for Temporary Restraining Order by
Natural Selection Foods, LLC ("Plaintiff") pursuant to Federal Rule of Civil Procedure 65(b).
Under Rule 65(b), a temporary restraining order may be granted without notice to the adverse party
only if: (1) it clearly appears from specific facts shown by affidavit or verified complaint that

1 immediate and irreparable injury, loss, or damage will result before the adverse party can be heard in
2 opposition, and (2) the applicant's attorney certifies the reasons that notice should not be required.

3 It appears to the court (1) that defendants Premium Fresh Farms, LLC; Salvadore Paul
4 Tarantino; Emmitt L. Pfost; Paul E. Dunham; PDP Associates, LLC; and AG Harvesting &
5 Technologies, LLC ("Defendants") have engaged in transactions requiring the establishment of a
6 statutory trust to the benefit of Plaintiff pursuant to the Perishable Agricultural Commodities Act
7 ("PACA"), 7 U.S.C. § 499e; (2) that Defendants are presently engaged in dissipating the assets it is
8 required to keep in trust under PACA; (3) that they will continue to do so unless restrained by order
9 of this court; (4) that notice of this TRO would cause further dissipation in advance of a court order;
10 and (5) that immediate and irreparable injury, loss, and damage will result to Plaintiff if Defendants
11 are not restrained from distributing claimed proceeds of the PACA trust pending a hearing and
12 determination of Plaintiff's motion for preliminary injunction. Accordingly,

13 IT IS HEREBY ORDERED:

- 14 1. That Defendants, their counsel, agents, officers, assigns, or representatives be and hereby are
15 restrained and enjoined pending the hearing and determination of Plaintiff's motion for
16 preliminary injunction from:
- 17 a. Removing, withdrawing, transferring, assigning, or selling to any other person
18 or entity, the proceeds from the sales of any or all existing or future
19 inventories of food or other products derived from perishable agricultural
20 commodities as defined in PACA, 7 U.S.C. § 499a(b), or receipts of payment
21 for such agricultural commodities sold prior to the date of this order,
22 provided, however that Defendants may sell perishable agricultural
23 commodities or products derived from perishable agricultural commodities for
24 fair compensation without right of set-off, on the condition that Fresh Farms
25 maintains the proceeds of such sale subject to this order.
 - 26 b. Taking any other action which causes dissipation of Plaintiff's beneficiary
27 interest in PACA trust assets; or
 - 28 c. Taking any action that violates the provisions of 7 U.S.C. § 499b(4).

2. This Order shall be binding upon the parties to this action and all other persons or entities who receive actual notice of this Order by personal service or otherwise.
3. The \$176,186.75 in PACA trust assets belonging to Plaintiff and in the possession of Defendants will serve as Plaintiff's security for this injunction as required by Federal Rule of Civil Procedure 65(c).
4. Plaintiff shall forthwith serve Defendants, or their resident agent, or their counsel, with a copy of this Order.

ORDER

Plaintiff's motion to consolidate the trial on the merits with the hearing on preliminary injunction is denied without prejudice. Although Plaintiff may be correct that consolidation would result in considerable economy, given that Plaintiff's complaint, filed concurrently with its *ex parte* application for temporary restraining order on January 10, 2007, has not been served upon Defendants, Defendants will have had no notice of trial and could be unfairly prejudiced.

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that Plaintiff shall serve the complaint, motion for preliminary injunction, and any supporting documentation previously filed with the court on Defendants within two (2) days; that Defendants shall file an opposition brief to Plaintiff's motion no later than Wednesday, January 17, 2007; that Plaintiff shall file a reply thereto no later than Monday, January 22, 2007; and that Defendants shall appear before the Honorable Ronald M. Whyte in courtroom 6, 4th floor, United States District Courthouse, located at 280 South First Street, San Jose, CA 95113, on Friday, January 26, 2007, at 9:00 a.m., or as soon thereafter as this matter may be heard, to show cause why they should not be enjoined and restrained from distributing PACA trust assets as set forth in the temporary restraining order pending the final hearing and determination of this action.

ISSUED ON: January 11, 2007 at 9:55 a.m.

/s/ James Ware
JAMES WARE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 Lawrence Henry Meuers

lmeuers@meuerslawfirm.com

4 **Counsel for Defendants:**

5 (No appearance)

6
7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

9
10 **Dated:** 1/11/07

SPT

Chambers of Judge Whyte